



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 15, 1996

Mr. John Steiner
Division Chief
City of Austin
Legal Department
P.O. Box 1088
Austin, Texas 78767-1088

OR96-0713

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 39062.

The City of Austin (the "city") received a request "to see and/or have any copies of documents . . . pertaining to the fiber optics capacity of Time Warner's lines." Pursuant to section 552.305 of the Government Code, the city asks whether it must withhold the requested information pursuant to sections 552.101 and 552.110 of the Government Code in order to protect the proprietary interest of Time Warner.¹

This office notified Time Warner of this request so that it could be given the opportunity to raise and explain the applicability of exceptions to the required public disclosure of the requested information. Time Warner asserts that the requested information is excepted from disclosure pursuant to section 552.110 of the Government Code. Section 552.110 excepts from disclosure two categories of information: (1) "[a] trade secret" and (2) "commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." Time Warner maintains that the information at issue here fits into both categories.

¹Time Warner Communications of Austin, L.P. and Time Warner Entertainment Company, L.P. are collectively referred to as "Time Warner" by counsel for Time Warner and in this letter.

In applying the "commercial or financial information" branch of section 552.110, this office now follows the test for applying the correlative exemption in the Freedom of Information Act, 5 U.S.C. § 552(b)(4). See Open Records Decision No. 639 (1996). That test states that commercial or financial information is confidential if disclosure of the information is likely either (1) to impair the government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. See *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). Time Warner avers that disclosure of the information is likely to cause substantial harm to its competitive position in the telecommunications industry.

In order to establish that the public release of information is likely to cause substantial competitive harm a business must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure. See Open Records Decision No. 639 (1996) at 4 (citing *Sharyland Water Supply Corp. v. Block*, 755 F.2d 397 (5th Cir.), cert. denied, 471 U.S. 1137 (1985)). We believe Time Warner has established that it actually faces competition and that substantial harm to its competitive position could result from the release of the information. Consequently, we conclude that the city must not release the information pursuant to section 552.110 of the Government Code.

Having concluded that the information is entitled to exception from public disclosure as confidential commercial and financial information, we need not address your trade secret arguments at this time. We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Kay Guajardo", with a long horizontal flourish extending to the right.

Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 39062

Enclosures: Submitted documents

cc: Mr. Bruce Hight
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